

# A CODE

FOR THE

## Government of Armies in the Field,

AS AUTHORIZED BY THE LAWS AND USAGES OF WAR ON LAND.

---

Printed as manuscript for the Board appointed by the Secretary of War [Special Orders, No. 399,] "To Propose Amendments or Changes in the Rules and Articles of War, and a Code of Regulations for the Government of Armies in the Field, as authorized by the Laws and Usages of War."

By **FRANCIS LIEBER**, Member of the Board.

FEBRUARY, 1863.

---

### C O D E .

MARTIAL LAW. MILITARY NECESSITY. RETALIATION.

§ 1. A place, district, or country, invested or occupied by an enemy, stands, in consequence of the occupation, under the Martial Law of the investing or invading army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law.

§ 2. Martial Law does not cease during the hostile occupation, except by special proclamation, ordered by the commander in chief; or by special mention in the treaty of peace, concluding the war, when the occupation of a place

or territory continues beyond the conclusion of peace, as one of the conditions of the same.

§ 3. Martial Law in a hostile country, consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force, for the same; as well as in the dictation of general laws—as far as military necessity requires this suspension, substitution, and dictation.

It is not unusual to proclaim that the administration of all civil and penal law shall continue, as in times of peace, unless specially interfered with by the military authority.

§ 4. Martial Law, although called law, does not consist in a body of rules of action. There is not even a distinct term for it in other languages.

Martial Law in a conquered or invaded country, or place, is temporary Military Absolutism, in the hands of commanders, who, therefore, must take care that it does not degenerate into arbitrary despotism. Martial Law is not the reckless use of military power by the highest or lowest in arms. Military oppression is not Martial Law.

§ 5. Military Necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for the obtaining of the ends of the war, and are lawful according to the modern law and usages of war.

§ 6. Modern times are distinguished from earlier ages, by the existence, at one and the same time, of many nations and great governments, related to one another in close intercourse. They draw abreast like chariot horses.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

Ever since the formation and co-existence of modern nations, and ever since wars have become great national wars, War has come to be acknowledged not to be its own end,



but the means to obtain great ends of state, or to consist in defence against wrong ; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted ; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

§ 7. Military Necessity admits of all direct destruction of life or limb of the armed enemies, and of those whose destruction is incidentally unavoidable in the armed contests of the war ; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor ; it allows of all destruction and obstruction of property, of the ways and channels of traffic, travel, or communion, and of all withholding of sustenance or means of life from the enemy ; of all appropriation necessary for the subsistence and safety of the army, and of all deception which does not involve the breaking of good faith either positively pledged regarding agreements entered into during the war, or supposed by the modern law of war to exist, even in the fiercest struggle, as a basis of intercourse between honorable belligerents. Men who take up arms against one another in public war, do not cease on this account to be moral beings, responsible to one another, and to God.

Military Necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge ;—nor of maiming or wounding except in fight, nor of torture to extort confessions ; it does not admit of the use of poison in any way, nor of the devastation of districts for the sake of creating depopulated districts, since it is the will of our Maker that in the normal state the land shall be tilled and peopled ; and, in general, Military Necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

§ 8. In modern wars all civil and penal law continues to take its usual course in the enemy's places and territories under Martial Law, unless interrupted or stopped by order of the occupying military power ; but all the functions of the hostile government, legislative, executive, or administrative, whether of a general, provincial, or local character,

cease under Martial Law, or continue only with the assistance or special approbation of the occupier or invader.

§ 9. Martial Law extends to property and persons, whether they are subjects of the enemy, or aliens to that government.

Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to Martial Law in cases of urgent necessity only.

Soldiers are rarely billeted in their houses ; but their property and business, if they are engaged in any, are not exempted.

Any delinquency they commit against the established military rule, may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

The functions of ambassadors, ministers, or other diplomatic agents, accredited by neutral powers to the hostile government, cease in the invaded, occupied, or conquered places or territories.

§ 10. Martial Law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety and the safety of its operations.

It allows of no individual violence ; and since it consists in the substitution of military rule for the established law and its administration, and because it is founded on military force, it is incumbent upon all military authorities acting by Martial Law, to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

§ 11. The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war (§ 7), but also the breaking of stipulations solemnly contracted by the belligerents, in time of peace, and avowedly intended to remain in force in case of war between the contracting powers.



It disclaims all extortions and other transactions for individual gain ; all acts of private revenge or connivance at such acts.

Offences to the contrary shall be severely punished in the American army, and especially so if committed by officers.

§ 12. Whenever feasible, Martial Law is carried out, in cases of individual offences, by courts-martial, and sentences of death shall be executed only by the approval of the commander of the army corps, provided the urgency of the case does not require a speedier execution. In no case shall a sentence of death by court-martial be executed without the approval of a general officer.

The finding of a court-martial, judging an enemy, may be set aside, in urgent cases, by the authority which has called together the court-martial, when a new court-martial is to be ordered ; but it is against the plain demands of justice and fairness, if the authority, which has ordered a court-martial, not only sets aside the finding, but inflicts a severer punishment than that in the finding. Instances to the contrary of this rule, in the history of war, although in the case of great captains, are not to be imitated.

§ 13. The law of war can no more wholly dispense with Retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge Retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.

The American people demand of their generals that Retaliation be never resorted to as a measure of mere revenge, but only as a means of protective retribution, and, moreover, cautiously, justly, and unavoidably ; that is to say, retaliation shall only be resorted to after careful inquiry, not blinded by passion, into the real occurrence, and the character of the misdeeds that may demand retribution, after an unsuccessful summons of the enemy to punish the evil-doers, and without transgressing the bounds of strict retaliation.

Doubtful Retaliation removes the belligerents farther and farther from the mitigating rules of a regular war, and by rapid steps leads them nearer to the internecine wars of savages.

PUBLIC AND PRIVATE PROPERTY OF THE ENEMY. PROTECTION OF PERSONS, AND ESPECIALLY WOMEN ; OF RELIGION, THE ARTS AND SCIENCES. PUNISHMENT OF CRIMES AGAINST THE INHABITANTS OF HOSTILE COUNTRIES.

§ 14. A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters, for its own benefit, or that of its government, all real property belonging to the hostile government or nation.

§ 15. A victorious army, by the martial power inherent in the same, may suspend, change, disacknowledge, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

§ 16. As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable or eleemosynary character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character—such property shall not be considered by the armies of the United States, public property in the sense of paragraph 14.

In exceptional cases, such as richly endowed churches or convents, their property may be taxed with military contributions.

§ 17. Classical works of art, noble fabrics, libraries, scientific collections, or precious instruments, such as astro-nomic telescopes, as well as hospitals, must be tenderly secured in the name of common humanity and civilization, against all avoidable injury, even when they are contained in fortified places, whilst besieged or bombarded.



§ 18. If such works of art, libraries, collections, or instruments belonging to the hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case ought they to be sold or given away by the captor or the victorious government during the war, still less ought they ever to be privately appropriated, or wantonly destroyed or injured.

§ 19. The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; unmixed private property—that is to say, property in which neither private and public property, nor the ideas of property and humanity, or person, are mixed;—the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offences to the contrary are to be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property especially houses, land, boats, or ships, and churches, for temporary and military uses.

§ 20. Private property, unless forfeited by crimes or by offences of the owner against the safety of the army or the dignity of the United States, and after due conviction of the owner by court-martial, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States.

If the owner has not fled, the commanding and seizing officer will give receipts, which may serve the spoliated owner to obtain indemnity from his own government, or which, if the seized property consists in large magazines and stores, or extensive real property—such as the demolition of houses, or the seizure of extensive lands for the erection of fortifications—may be ultimately accounted for or disposed of by the treaty of peace concluding the war.

§ 21. The salaries of civil officers of the hostile government who remain in the invaded territory, and continue

the work of their office, and can continue it according to the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenue of the invaded territory, until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles, are always stopped.

§ 22. There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations, which is called the law and usages of war on land.

All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

Slavery, complicating and confounding the ideas of property, (that is of a thing,) and of personality, (that is of humanity,) exists according to municipal or local law only. The law of nature and nations, has never acknowledged it. The jurists of all countries agree. The Digest of the Roman Law enacts the early dictum of the pagan jurist, that “so far as the law of nature is concerned, all men are equal”; and fugitives escaping from a country, in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free, and acknowledged free, by judicial decisions of European countries, even though the municipal law of the country, in which the slave had taken refuge, acknowledged slavery within its own dominions.

§ 23. Therefore, if the United States wage war with a government which admits of slavery, and a fugitive from the opposite belligerent offers himself for protection to the American army, and is free from the suspicion of mischievous intentions, he must be received and protected, be he a fugitive slave or not; and once received and protected by the United States, under the shield of the Law of Nations, he can never be returned into slavery or given up to the enemy.

Returning such a person would amount to enslaving a free person, and neither the United States nor any officer



under their authority has the right to enslave any human being. No Christian state has claimed, for centuries past the right of enslaving those who are free.

§ 24. All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage, or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offence.

A soldier, private or officer, in the act of committing such violence, and disobeying a superior, ordering to abstain from it, may be lawfully killed on the spot by such superior.

§ 25. There is no prize money on land. All booty belongs to the United States, and not to any individual.

§ 26. Neither officers nor privates are allowed to make use of their position or power in the hostile country for transactions of private gain, not even for commercial transactions otherwise legitimate. Offences to the contrary committed by commissioned officers will be punished with the loss of the gain, with cashiering, and such additional punishment as the nature of the offence may require, not exceeding        years imprisonment.

§ 27. Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country, against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred, because the criminal has, as far as in him lay, prostituted the power conferred on a man of arms, and prostrated the dignity of the United States.

DESERTERS. PRISONERS OF WAR. BOOTY ON THE BATTLE-FIELD.

§ 28. Deserters from the American army, having entered the service of the enemy, suffer death, if they fall again into the hands of the United States, whether by capture, or being delivered up to the American army ; and if a deserter from the enemy having taken service in the army of the United States, is captured by the enemy, and punished by them with death or otherwise, the United States do not consider it a breach against the law and usages of war, requiring redress or retaliation.

§ 29. A prisoner of war is a public enemy, armed or attached to the hostile army for active aid, having fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms ; all men who belong to the rising *en masse* of the hostile country ; all those who are attached to the army for its efficiency, and promote directly the object of the war, such as officers of the commissariat or teamsters, if captured ; all enemies who have thrown away their arms and ask for quarter ; all disabled men or officers on the field or elsewhere : all such persons are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

§ 30. Moreover, citizens who accompany an army for whatever purpose, such as suttlers, editors or reporters of journals, or contractors, if captured, are prisoners of war, and may be detained as such.

The chief of the hostile government, the monarch and members of the hostile reigning family, male or female, the chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.



§ 31. The enemy's army surgeons, apothecaries, hospital nurses, hospital servants and superintendents, and chaplains, if they fall into the hands of the American army, are not prisoners of war, unless the commander has reasons to retain them. In such cases, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war.

American generals are permitted, if they see fit, to exchange captured surgeons and others belonging to the medical staff.

§ 32. A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

§ 33. At all periods of history, ancient or modern, governments have employed as soldiers people of different races or color. Every European nation, having an opportunity of enlisting men of different races, actually does so, without exception.

So soon as a man is armed by a sovereign government, and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts, are no individual crimes or offences. Thus, in ancient times, the *sacramentum*, changed the homicide of an enemy, from murder to a lawful act.

The Law of Nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States cannot retaliate by enslavement; therefore death must be the retaliation for this crime against the Law of Nations.

§ 34. The prisoner of war remains answerable for the crimes committed against the captor's army or people, committed before he was captured and for which he has not been punished by his own authorities. The prisoner of war remains liable to the infliction of retaliatory measures.

§ 35. No regiment or division of troops has the right to declare that for a single occasion it will not give, and therefore will not receive, quarter.

A commander is permitted to direct his troops to give no quarter, in great straits only, when his own salvation makes it impossible to cumber himself with prisoners.

[The chief commander may permit a regiment or division to declare, for the duration of the war, that it will not give, and therefore does not expect, quarter.]

Troops that give no quarter, have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

It is against the usage of modern war, because it is savage, to resolve, in hatred and revenge, to give no quarter.

All troops of the enemy, known or discovered to give no quarter to any portion of the army, receive none.

§ 36. The Law of Nations allows every sovereign government to make war upon another sovereign state, and, therefore, admits of no different rules regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant; nor has the defensive government the right to proclaim that it will ill-treat the prisoners it may make, against the rules and laws of regular warfare.

§ 37. Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy, in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life, is not lawful.

Outposts, sentinels, or pickets, are not fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it, puts himself out of the pale of the law and usages of war. Thousands of years ago it was held that



no one who fears a supreme avenger of wrong, will poison his arrow.

§ 38. Whoever intentionally inflicts additional wounds on an enemy already disabled from fighting, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death if duly convicted, whether he belongs to the army of the United States, or is an enemy captured after having committed his misdeed.

§ 39. Arms, ammunition, horses, wagons, and implements of war, as well as provision and clothing, taken on the battle-field, or captured otherwise, belong to the United States.

All regulation arms found upon prisoners of war belong to the United States ; but small arms, not usually belonging to the regulation arms of the respective troops, such as daggers or private pistols, belong to the captor or captors.

If any dispute arises among the captors regarding the ownership or fair division of the latter, the commissioned officer next in rank above the disputants, on the spot where the dispute arises, shall decide the dispute, and the decision shall be final.

§ 40. It is the usage in European armies that money and all valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, belong to the captor ; but it distinguishes the army of the United States that the appropriation of such valuables or money is considered dishonorable, and not suffered by the officers.

Nevertheless, if large sums are found upon the persons of prisoners, they shall be taken from the prisoners, and appropriated for the army. Nor can prisoners claim, as private property, large sums found and captured in their train, although it had been placed in the private luggage of the prisoners. Such luggage must always be searched.

§ 41. A prisoner of war, being a public enemy, is the prisoner of the government, and not of the captor. No ransom can be paid by a prisoner of war to his individual captor, or to any officer in command. The government

alone releases captives, according to rules prescribed by itself.

§ 42. Prisoners of war are subject to the confinement or imprisonment deemed necessary on account of safety, but they are subjected to no other intentional suffering or indignity. The confinement, or mode of releasing the prisoner, may be varied during his captivity according to the demands of safety.

§ 43. Prisoners of war are fed upon plain and wholesome food, according to circumstances, and are treated with all humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

They may be temporarily assigned, under proper restrictions, to private citizens willing to take them, and with whom they may earn wages, and thus pay for their expenses.

§ 44. A prisoner of war, who escapes, may be shot, or otherwise killed in his flight; but neither death nor any other punishment is inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security are used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators are rigorously punished, even with death, as capital punishment is also inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow-prisoners or other persons.

§ 45. If prisoners of war, having given no pledge nor made any promise, on their honor, forcibly, or otherwise escape, and are captured again in battle, after having rejoined their own army, they are not punished for their escape, and are treated as simple prisoners of war, although they will be subjected to stricter confinement.

§ 46. Every captured wounded enemy is medically treated,



according to the ability of the medical staff, like a wounded friend.

§ 47. Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners, in order to extort the desired information, or to punish them for having given false information.

ARMED ENEMIES NOT BELONGING TO THE HOSTILE ARMY.  
SCOUTS. ARMED PROWLERS. WAR-REBELS.

§ 48. Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers, such men, or squads of men, are not public enemies, and, therefore, if captured, not entitled to the privilege of a prisoner of war, but are treated summarily as highway robbers or pirates.

§ 49. Nor is the privilege of the prisoner of war extended to single armed prowlers, by whatever names they may be called, or to persons of the enemy's territory, who steal within the lines of the hostile army, for the purpose of robbing, killing, destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires. If captured, they are dealt with as pirates at sea are treated.

§ 50. Scouts, that is, single soldiers, disguised in the dress of the country, or in the uniform of the army hostile to their own, detailed or organized to obtain information, if captured within the lines of the captor, are treated as spies, and suffer death.

§ 51. Persons within an occupied territory, that rise in

arms against the occupying or conquering army, or against the authorities established by the same, are war-rebels, and suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. If captured, they are not prisoners of war; nor are they, if discovered and secured before their conspiracy has matured to an actual rising, or to armed violence.

The Partisan proper, belonging to the army, although acting in a corps separate from the main body, if captured, is a prisoner of war.

SPIES. TRAITORS. CAPTURED MESSENGERS. ABUSE OF THE  
FLAG OF TRUCE.

§ 52. All intercourse between the inhabitants of territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government, or by the highest military authority.

Contraventions of this rule are highly punishable.

§ 53. Ambassadors, and all other diplomatic agents of neutral powers, accredited to the enemy, ought to receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if the safe-conduct is declined.

§ 54. If a person belonging to the territory of the enemy, occupied by a hostile army, gives information to the enemy, unauthorized to do so by the occupying or conquering authority, such person is either a spy or traitor, and in either case is punished with death.

§ 55. A spy is a person who secretly, in disguise or under false pretence, seeks information with the intention of communicating it to the enemy, or who causes others to do so.



The spy is punished with death by hanging by the neck, whether or not he succeeded in obtaining the information, or in conveying it to the enemy.

§ 56. If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer, or a private citizen, he is a traitor, and is condemned to death.

§ 57. All unauthorized and secret communication with the enemy, is considered treasonable by the Law of War.

§ 58. A messenger carrying despatches, in whatever form, from one portion of the army, or from a besieged place, to another portion of the same army, or its government—if captured while doing so, in the enemy's territory, or in the territory occupied by the enemy, is treated by the capturing enemy as a spy.

The same fate awaits such messenger, although he may not have any written despatch about him, when it can be proved that he is the carrier of verbal messages.

This does not apply to armed troops, ready to fight their way through, although they may carry messages.

§ 59. If it be discovered, and fairly proved, that a flag of truce has been abused for the surreptitious obtaining of military knowledge, the bearer of the flag thus abusing his sacred character, is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offence, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce of this crime, and in punishing him accordingly.

§ 60. The Law of War, like the Criminal Law regarding other offences, makes no difference on account of the difference of sexes, concerning the spy, the traitor, or the war-rebel.

§ 61. Spies, traitors, and war-rebels are not exchanged according to the common law of war.

The exchange of such persons would require a special car-

tel, authorized by the President of the United States, or, at a great distance from the United States, by the chief commander of the army in the field.

EXCHANGE OF PRISONERS. FLAGS OF TRUCE. FLAGS OF PROTECTION.

§ 62. Exchanges of prisoners take place with prisoners of war only—number for number—rank for rank—wounded for wounded—with added condition for added condition—such, for instance, as not to serve for a certain period.

§ 63. In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank, as may be agreed upon by cartel, which requires the sanction of the President of the United States, or of the commander of the army in the field.

§ 64. A prisoner of war is in honor bound truly to state to the captor his rank, and not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange; nor a higher rank, for the purpose of obtaining better treatment.

Offences to the contrary have been justly punished by the commanders of released prisoners.

§ 65. The surplus number of prisoners of war remaining after an exchange has taken place, is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessities.

Such arrangement, however, requires the sanction of the highest authority.

§ 66. The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded, it cannot be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

A cartel is null and void so soon as either party has violated it.

§ 67. No exchange of prisoners shall be made except



after complete capture, and after an accurate account of all, and a list of the captured officers, has been taken.

No exchange shall take place during or immediately after an engagement.

§ 68. A flag of truce cannot insist on being admitted.

It must always be admitted with great caution.

Unnecessary frequency is carefully to be avoided.

A flag of truce offering himself during an engagement can be admitted as a very rare exception only. It is no breach of good faith to retain such a flag of truce, if admitted during the engagement. Firing is not allowed to cease at the appearance of a flag of truce in battle.

If a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

§ 69. It is customary to designate by certain flags of protection the hospitals, in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles, when hospitals are situated within the district of the engagement.

An honorable belligerent allows himself to be guided by these flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

Honorable belligerents even request by flags of truce to designate the hospitals within the territory of the enemy, so that they may be spared.

It is duly considered an act of military bad faith, of infamy or fiendishness, to deceive the enemy either by such flags of protection, or by the request to hoist them.

§ 70. The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories or precious libraries, so that their destruction may be prevented as much as possible.

The United States highly commend such conduct to their armies, and remind them that some instances of this care for civilization in the midst of destructive war, even in remote antiquity, are recorded in history.

## THE PAROLE.

§ 71. Prisoners of war may be released from captivity not only by exchange, but, under certain circumstances, also by parole.

The term Parole designates, in military language, the pledge of individual good faith and honor to do, or to omit doing, certain acts, after he who gives his parole shall have been dismissed, wholly or partially, from the power of the enemy.

The pledge of the parole is always an individual, but not a private act.

§ 72. The parole applies chiefly to prisoners of war, whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions implied by the parole.

§ 73. Release of prisoners of war by exchange, is the general rule; release by parole is the exception.

§ 74. Breaking the parole not to fight again during the war or until exchanged, is punished with death, when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons, must be kept by the belligerents.

§ 75. Commissioned officers only, are allowed to give their parole, and they must do it with the permission of their superior, as long as a superior in rank is within reach.

Paroling must always take place by the exchange of two written documents, in which the name and rank of the paroled individual are accurately and truthfully stated.

§ 76. No wholesale paroling, done by an officer for a number of inferiors in rank, is permitted or valid.

No paroling on the battle-field; no paroling of entire portions of troops after a battle; no dismissal of large numbers of prisoners with a general declaration that they are paroled, is permitted, or of any value.

Every officer who fails in this respect, is to be punished and cashiered.



§ 77. In capitulations for the surrender of strong places or fortified camps, the commanding officer, in cases of urgent necessity, may stipulate that the troops under his command shall not fight again in the war until exchanged; [but no more.]

§ 78. The usual pledge given in the parole is not to serve in the existing war, or not to serve for a stated time, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. It does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, to quelling civil commotions, to fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

§ 79. If the government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

§ 80. A belligerent government may declare by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

§ 81. No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers, if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

§ 82. Civil officers kept as prisoners of war, may be paroled; but no citizens without office, no citizens in a merchant vessel stopped by a privateer or man-of-war, can be paroled. Nor can inhabitants of places or territories occupied by the enemy, be paroled by the latter. Their government does not lose its claim for military service upon such persons, should they give their parole, for it is of no value. If they should be paroled, and, being captured at a later period

as soldiers, should not be treated by the captor as prisoners of war, such conduct of the enemy would be ground for retaliation.

#### ARMISTICE. CAPITULATION.

§ 83. An armistice is the cessation of active hostilities for a period, agreed upon between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

§ 84. Armistices may be general, and valid for all points and lines of the belligerents, or special, that is, referring to certain troops or certain territories only.

Armistices may be concluded for a definite time or for an unsettled time, with a stipulated period, which must elapse between the notice given by either party that hostilities will be resumed and the actual resumption of hostilities; or they may be concluded for a definite time, and so much longer as may be found convenient for the belligerents, with the obligation of giving due notice of the resumption of hostilities, a fixed time previous to the actual resumption.

§ 85. The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary for an ultimate treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

§ 86. Every armistice involves not only the idea of the cessation of actual hostility, that is of attacking the enemy, but also that the hostile armies or troops remain in *status quo* with reference to the position of the hostile armies opposite to or fronting one another.

Neither belligerent is allowed to extend his troops to the injury of the other, or to make any change in his front; but each belligerent in the open field, may do whatever he may deem advantageous for securing or fortifying himself in his position, if it can be done without extending or advancing his lines or posts, and he may receive additional troops,



supplies, or ammunition. He may levy new troops during the armistice.

§ 87. The law of war is in full action during an armistice except only, as to fighting and hostile changes of the front ; or if the armistice is a general one, as to the sending hostile expeditions to distant places.

§ 88. Armistices are binding for the belligerent governments from the day of the agreed commencement ; but the officers of the armies are responsible from the day only when they receive official information of the conclusion of the armistice. If any injury results to one or the other party from this difference, which cannot be avoided in war, it belongs to the province of the belligerent governments to seek redress, and to provide for the remedy. Military officers having thus done the injury cannot be made responsible for the same in any way, nor do these injuries amount to cases requiring retaliation.

§ 89. Commanding officers have the right to conclude armistices extending to the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

§ 90. It is incumbent upon the contracting parties of an armistice, to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any.

If nothing is stipulated the intercourse remains suspended as during actual hostilities.

An armistice is not a partial or a temporary peace ; it is only the suspension of attack or actual injury.

§ 91. When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject, that the besieger must cease all

extension, perfection, or advance of his attacking works as much so as from the attacks by main force.

But there is a difference of opinion among the martial jurists, whether the besieged have the right to repair breaches or to erect new works of defence within the place during an armistice.

[It is therefore declared by the United States, that they neither claim for themselves, nor allow to their enemies, the right of the besieged to repair breeches or to erect new works of defence during an armistice, unless the contrary be distinctly stipulated in the agreement concluding the armistice.]

The United States expect every American officer to stipulate distinctly for the one or the other, in an armistice which he may conclude with the enemy.

§ 92. So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

§ 93. So soon as an armistice is broken, hostilities recommence in all their vigor on all points, without previous notice.

The injured belligerent government must seek redress.

[Prisoners captured during a breach of the armistice, are nevertheless prisoners of war, whether they are officers or privates.]

§ 94. Armistices and capitulations are sacredly to be observed, in good faith and military honor ; and since capitulations imply many conditions and measures which cannot be altered or retraced, if the government does not ratify them, the utmost caution and undaunted fortitude must prevail in agreeing to them.

§ 95. Belligerents frequently conclude an armistice, while their plenipotentiaries are met to discuss the conditions of a treaty of peace ; but, as often, the plenipotentiaries meet without a preliminary armistice. In the latter case, the war is carried on without any abatement, and the army must



not suffer itself to be influenced by any inconvenience which the changes of fortune in the field may exercise on the diplomatic discussions. It belongs to the belligerent governments to adjust these inconveniences, and not to the generals to slacken the war on these, or, indeed, on any other occasions.

#### ASSASSINATION.

§ 96. The Law of War does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, that may be slain without trial by any captor, any more than the modern law of peace allows such international outlawry; on the contrary, it abhors such outrage. The sternest retaliation would follow the murder committed in consequence of such proclamation, made by whatever authority.

§ 97. The American people, as all civilized nations, look with horror upon offers of rewards for the assassination of any enemies, as relapses into the disgraceful courses of savage times.

The assassination of a prisoner of war, is a murder of the blackest kind, and if it takes place, in consequence of the offer of a reward or not, and remains unpunished by the hostile government, the Law of War authorizes the most impressive retaliation, so that the repetition of a crime most dangerous to civilization, may be prevented, and a downward course into barbarity may be arrested.